

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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In the Matter of the Application of
HAWAIIAN ELECTRIC COMPANY, INC.
For Approval of Rate Increases and Revised
Rate Schedules and Rules

DOCKET NO. 2008-0083

MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE
AND BECOME A PARTY OF
HAWAII COMMERCIAL ENERGY CUSTOMER GROUP

EXHIBIT "A"

DECLARATION OF COUNSEL

DECLARATION OF DEAN K. MATSUURA

AND

CERTIFICATE OF SERVICE

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**MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE
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OF HAWAII COMMERCIAL ENERGY CUSTOMER GROUP**

HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") respectfully submits this Memorandum in Opposition to the Hawaii Commercial Energy Customer Group's ("Commercial Group") Motion to Intervene and Become a Party, filed September 29, 2008¹ ("Motion").²

¹ The Motion to Intervene and the Motion to Appear on Behalf of the Commercial Group (which were filed on October 29, 2008) were mailed to HECO and with a September 29, 2008 postmark. See Declaration of Dean K. Matsuura. The time stamp placed upon the envelope delivered to HECO's counsel of record, Goodsill Anderson Quinn & Stifel ("Goodsill"), containing (1) the Motion to Intervene, and (2) the Motion to Appear indicates that the envelope was received via hand delivery at Goodsill's offices at 11:21 am on September 30, 2008. See Declaration of Counsel. Hawaii Administrative Rules ("HAR") § 6-61-41(c) states: "An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion" HAR § 6-61-22 states: ". . . When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation" Five days from September 30, 2008, excluding Saturdays, Sundays and holidays, is Tuesday, October 7, 2008. Therefore, this Memorandum in Opposition to the Motion is timely filed.

The Certificates of Service filed by the Commercial Group in this docket do not accurately state the time and manner in which HECO's attorneys at Goodsill Anderson Quinn & Stifel were served with the Commercial Group's Motion to Intervene or Motion to Appear.

First, the Certificate of Service attached to the Commercial Group's Motion to Intervene, filed September 29, 2008, did not certify service of the Motion on HECO's counsel.

Second, the Certificate of Service attached to the Motion to Appear on Behalf of the Commercial Group, filed September 29, 2008, incorrectly indicated that HECO's counsel was served via hand delivery on September 29, 2008. Third, on September 30, 2008, the Commercial Group filed an amended Certificate of Service to their Motion to Intervene, incorrectly alleging that HECO's counsel was served

The Commercial Group should not be allowed to intervene as a full party in this docket, as: (1) the Commercial Group's interests with respect to general rate case issues (e.g., revenues, expenses, rate base, rate of return, cost of service and rate design) can be adequately represented by the Consumer Advocate; (2) the Commercial Group has not demonstrated that its participation would assist in the development of a sound record regarding the reasonableness of HECO's proposed rate increase; and (3) the Commercial Group has not shown that it should be granted full-party status in this proceeding, given its limited interest in the primary issues in a general rate increase proceeding (i.e., the revenue requirements issues); and (4) a movant should not be permitted to file alternative motions to intervene in the same proceeding.

First, the Commercial Group's alleged interest in these proceedings is focused on cost of service and rate design, and not general rate case issues such as revenues, expenses, rate base and rate of return. In addition, the Commercial Group's interest in general rate case issues is generally the same as that of the general public, as the Commercial Group generally represents a cross section of Hawaii's commercial utility customers.

Second, the Commercial Group's general and unsupported allegations have not demonstrated that its participation would assist in the development of a sound record regarding the reasonableness of HECO's proposed rate increase. The Motion does not specifically identify any of the Commercial Group's potential witnesses, or alleged experience with rate case

with that Motion via hand delivery on September 29, 2008.

In addition, the September 29, 2008 transmittal letter accompanying the Commercial Group's Motion to Intervene and Motion to Appear, incorrectly indicates that the motions were served upon HECO's counsel by mail. A true and correct copy of Commercial Group's transmittal letter, dated September 29, 2008 is attached hereto as Exhibit "A".

² The Motion indicated that "[t]he current members of the Commercial Group are: Maui Divers of Hawaii, Limited; Safeway Inc.; Sam's West, Inc.; Step Three, Ltd., dba Sandal Tree; the Retail Merchants of Hawaii Inc.; and Wal-Mart Stores, Inc." Motion at 2. By letter filed October 3, 2008, the Commercial Group supplemented its Motion by adding Macy's, Inc. to the group.

proceedings that would contribute to the development of a sound record regarding general rate case issues.

Third, in essence, Wal-Mart Stores, Inc. has filed alternative motions to intervene in this docket, which have given it a “second bite at the apple” for intervention through the Commercial Group’s Motion to Intervene. This does not contribute to the just, speedy and inexpensive disposition of cases, which is the purpose of the Commission’s Rules of Practice and Procedure.

For all these reasons, HECO respectfully requests that the Commission deny the Commercial Group’s Motion to Intervene and Become a Party. If the Commercial Group is allowed to participate in this docket, however, then the Commercial Group should be designated a participant, and not an intervenor party, and its participation should be limited to cost of service and rate design issues. Moreover, the Commercial Group’s participation should not be permitted in any settlement agreement between the parties or to affect the schedule of proceedings or the statement of the issues, and the Commercial Group should be required to comply with the Commission’s Rules of Practice and Procedure.

I. DISCUSSION

A. BACKGROUND

On August 20, 2008, Wal-Mart Stores, Inc. and Sam’s West. Inc. (collectively, “Wal-Mart”) filed a Motion to Intervene and Become a Party (the “Wal-Mart Motion”) to this docket. In connection with that Motion, Holly Rachel Smith (“Ms. Smith”, of the law firm of Russell W. Ray, PLLC, located in Alexandria Virginia), along with local counsel from the law firm of Bays Deaver Lung Rose & Holma (“Bays Deaver”) were named as attorneys for Wal-Mart.

HECO filed a Memorandum in Opposition to the Wal-Mart Motion on August 27, 2008 (“HECO’s Wal-Mart Memo”), wherein HECO explained that Wal-Mart did not meet the standard for intervention as a party set forth in HAR § 6-61-55, and more specifically, that Wal-

Mart did not demonstrate that: (1) the very general interest that it alleged would not be adequately represented by the Consumer Advocate; (2) Wal-Mart's intervention as a party would contribute in any significant way to the development of a sound record regarding the reasonableness of HECO's proposed rate increase; and (3) Wal-Mart's intervention as a party would not unduly delay the proceedings and unreasonably broaden the issues presented in this docket. The Wal-Mart Motion is currently pending before the Commission.

The Commercial Group's Motion to Intervene, filed September 29, 2008, included another appearance of Counsel by Ms. Smith (along with local counsel from the law firm of Kobayashi, Sugita & Goda ("Kobayashi")), this time as an attorney for the Commercial Group. Thereafter, on October 1, 2008, Wal-Mart filed a Notice of Withdrawal and Substitution of Counsel ("Notice of Withdrawal"), expressing its "wishes to substitute Joseph A. Stewart of Kobayashi, Sugita & Goda, for Bruce Voss and Lori Tanigawa of Bays Deaver Lung Rose & Holma, as local counsel in this proceeding"³ The Notice of Withdrawal added that:

Wal-Mart is a member of the Commercial Group. Wal-Mart would like to inform this Honorable Commission that upon grant of the Commercial Group's intervention request, Wal-Mart will participate in this docket through the Commercial Group. Further, upon approval of the intervention of the Commercial Group, Wal-Mart will withdraw its pending motion for intervention.⁴

By letter dated October 2, 2008 (and filed October 3, 2008), the Commercial Group informed the Commission that Macy's, Inc. is also a member of the Commercial Group.

³ Notice of Withdrawal, para. 1. Although the cover page for the Notice of Withdrawal lists Joseph A. Stewart and Ms. Smith as "Attorneys for the Hawaii Commercial Energy Customer Group", the signature page of the Notice of Withdrawal lists Joseph A. Stewart and Ms. Smith as "Appearing Counsel for Wal-Mart Stores, Inc., and Sam's West, Inc."

⁴ Id., para. 2.

B. THE COMMERCIAL GROUP'S MOTION TO INTERVENE SHOULD BE DENIED.

In its Motion, "the Commercial Group request's [sic] that the Commission allow it to intervene in this proceeding with the full powers and rights granted . . . to intervening parties." Motion at 4. However, the Commercial Group should not be allowed to intervene in this docket, as: (1) the Commercial Group's interests with respect to general rate case issues (e.g., revenues, expenses, rate base, rate of return, cost of service and rate design) can be adequately represented by the Consumer Advocate; (2) the Commercial Group has not demonstrated that its participation would assist in the development of a sound record regarding the reasonableness of HECO's proposed rate increase; and (3) a movant should not be permitted to file alternative motions to intervene in the same proceeding. Alternatively, if the Commission allows the Commercial Group to intervene or participate in this proceeding, it should not allow the Commercial Group to intervene as a full party as the Commercial Group has not shown that it should be granted full-party status in this proceeding, given its limited interest in the primary issues in a general rate increase proceeding (i.e., the revenue requirements issues).

1. Standard for Intervention.

Motions to intervene are governed by the Rules of Practice and Procedure Before the Public Utilities Commission, ("Commission's Rules of Practice and Procedure") Title 6, Chapter 61, Subchapter 4, HAR, which pertains to intervention as a party as well as participation without intervention. The Commercial Group has labeled its Motion as a "Motion to Intervene and Become a Party" filed pursuant to HAR § 6-61-55. Under HAR § 6-61-55(a), "A person may make an application to intervene and become a party by filing a timely written motion . . . stating the facts and reasons for the proposed intervention and the position and interest of the applicant."

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is

that intervention as a party to a proceeding before the Commission “is not a matter of right but is a matter resting within the sound discretion of the Commission.” In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. HAR § 6-61-55(d) specifically states: “Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.” Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993).

In addition, the Commission needs to “secure the just, speedy and inexpensive determination of every proceeding,” which is the purpose of the Commission’s Rules of Practice and Procedure as stated in HAR § 6-61-1. However, the “just, speedy and inexpensive determination” of a proceeding cannot be accomplished if the Commission admits every movant as a party.

Moreover, persons allowed to intervene by the Commission in ratemaking proceedings pursuant to HAR § 6-61-55 generally are afforded full-party status with respect to all issues raised in the proceedings. A strong showing should be required before a person is permitted to intervene as a full party. Based on the standards set forth above, the Commercial Group has not justified its intervention as a full party in this docket, and thus the relief requested in its Motion should be denied.

2. The Commercial Group’s Interests can be Adequately Represented by the Consumer Advocate.

HAR § 6-61-55(b)(4) requires that motions to intervene make reference to “[t]he other

means available whereby the applicant's interest may be protected[.]” In addition, HAR § 6-61-55(b)(5) requires that motions to intervene make reference to “[t]he extent to which the applicant's interest will not be represented by existing parties[.]”

With respect to these requirements, the Commercial Group claims that:

The existing parties are HECO and the Consumer Advocate. The Department of Defense has requested intervention, however, the Commission has yet to rule on the Department's request.

For a number of reasons, none of the other parties and anticipated participants can represent the Commercial Group's interests. The Consumer Advocate is required to “represent, protect, and advance the interest of all consumers.” However, in some cases, the Consumer Advocate, in considering the interests of all HECO's ratepayers, may not necessarily be able to advance the interests of individual large customers, such as the members of the Commercial Group. This is the case especially with regard to cost allocation and rate design, which are issues in this case that are extremely important to the Commercial Group.

Motion at 5 (footnote omitted).⁵ The Commercial Group's claims are not persuasive.

a. **The Commercial Group's Interest in these Proceedings is Focused on Cost of Service and Rate Design Issues.**

General rate increase proceedings encompass a number of issues including revenues, expenses, rate base and rate of return, and persons afforded full-party status in ratemaking proceedings generally are allowed to participate with respect to all issues raised in the proceedings. However, the Commercial Group's interest in these proceedings is focused on cost of service and rate design:

- “This is the case especially with regard to cost allocation and rate design, which are issues in this case that are extremely important to the Commercial Group.”⁶

⁵ The Commercial Group asserts that, “The existing parties to this docket are HECO and the Consumer Advocate. The Department of Defense has requested intervention, however, the Commission has yet to rule on the Department's request.” Motion at 6. This assertion is untrue, as the Commission issued its “Order Granting Intervention to Department of Defense” in this docket on August 20, 2008 (“DOD Order”).

⁶ Motion at 5, para. 9 (emphasis added).

- “[T]he Commercial Group will focus its participation in this case on how the proposed rate increase will impact the facilities of the Commercial Group’s members, as well as the impact that would result from the proposed changes to rate design and cost of service.”⁷
- “Generally, the Commercial Group opposes the relief sought by HECO, inasmuch as the proposed level of increase, distribution to the various customer classes, and the design of rates will adversely impact the Commercial Group’s operations.”⁸

The Commercial Group’s interest is focused on cost of service and rate design issues – not general rate case issues. In light of the strong showing that should be required of a person seeking intervention as a full party to a rate proceeding, it would be inappropriate to permit the Commercial Group to participate with respect to general rate case matters.

b. The Commercial Group’s Interests are Generally the Same as Other Commercial Customers.

The Commercial Group’s interest in general rate case issues (e.g., revenues, expenses, rate base, rate of return) is generally the same as that of other commercial customers. As a result, the Commercial Group’s interest in general rate case issues can be adequately represented by the Consumer Advocate. The Consumer Advocate is statutorily required to “represent, protect, and advance the interest of all consumers.” Hawaii Revised Statutes (“HRS”) § 269-51 (emphasis added). Thus, the Consumer Advocate’s statutory duties extend to all of HECO’s customers, both residential and commercial. HRS § 269-54(b)(7) enforces this requirement by providing the Consumer Advocate with the express authority to “[r]epresent the interests of consumers of utility services before any state or federal agency or instrumentality having jurisdiction over matters which affect those interests.”

In addition, by representing all consumers (e.g., residential and commercial customers), the Consumer Advocate will balance their interests in the positions that it takes in this docket.

⁷ Motion at 6, para. 11 (emphasis added).

⁸ Motion at 7, para. 13 (emphasis added).

The Commercial Group, composed of only commercial customers, will advocate for the interests of the commercial customers only.

In Docket No. 2008-0115 the Commission recently denied a motion to intervene by the West Molokai Association ("WMA") on grounds that the Consumer Advocate would appropriately represent the interests of WMA in the proceeding.⁹ Through its motion to intervene, WMA attempted to distinguish its interests from those of the Consumer Advocate (which the Commercial Group does not do) as follows:

[The Consumer Advocate] represents many of the common goals of all parties to this proceeding, namely provision of essential water and wastewater services over the long term at reasonable rates. However, because [the Consumer Advocate] must represent the interests of customers of [Wai'ola], which customers include Mauanaloa [sic], Kualapuu, south Kalae and other adjacent areas in Central and West Molokai, [the Consumer Advocate] must divide its attention in representing WMA's interests. Further, [the Consumer Advocate] neither directly nor indirectly suffers the consequences of a Commission decision adversely impacting consumers. Only WMA has that perspective to offer the Commission. Further, WMA has access to information which will be of assistance to the Commission and to [the Consumer Advocate].¹⁰

The Commission determined:

WMA's members are essentially utility customers of MPU and Mosco. Pursuant to HRS § 269-51, the Consumer Advocate "shall represent, protect, and advance the interests of all consumers, including small businesses, of utility services" in the State. Thus, the Consumer Advocate is statutorily mandated to represent the interests of WMA's members in this docket, and will do so in this docket.¹¹

⁹ Order Denying Motion to Intervene Filed by West Molokai Association, Docket No. 2008-0115 (August 8, 2008).

¹⁰ Id. at 4.

¹¹ Id. at 6-7. Similarly, in Order No. 23097 in Docket No. 2006-0431 ("Power Outage Investigation"), the Commission denied a motion to intervene submitted by Life of the Land ("LOL") because the Commission did not find LOL's interest in that proceeding to be distinct from the general public and found that LOL's interests would be adequately represented by the Consumer Advocate. In the Power Outage Investigation, LOL asserted that the Consumer Advocate could not represent its interests and that LOL's interests differ from that of the general public since the Consumer Advocate protects the consumers' interests while LOL represents environmental interests. Order No. 23097 at 9-10. The Commission did not find this argument convincing and determined that LOL's interests in that docket could be adequately represented by the Consumer Advocate. Id.

c. **The Commercial Group has not Demonstrated that the Consumer Advocate will not Represent the Commercial Group's Interest.**

The Motion does not provide any support for the Commercial Group's contention that the Consumer Advocate will not be able to represent the group's interests regarding the general rate case issues in this proceeding. By contrast, in support of its Motion to Intervene, filed July 29, 2008, the Department of Defense ("DOD") indicated that: (1) it maintains numerous military installations within the State; (2) it is one of the largest purchasers of electric services in the State; (3) it has participated in other dockets related to rate increases and rate design (such as the Integrated Resource Planning and Demand-Side Management dockets); (4) it has a crucial and strategic interest in securing electricity at the lowest but also at a fair cost; and (5) intervention would serve the public interest in that the DOD expends funds on behalf of the taxpayers of the United States in the furtherance of the goals and objectives of the federal government. See DOD Order at 4; see also Order No. 23366, filed April 13, 2006 in HECO's 2007 test year rate case, Docket No. 2006-0386 (wherein the Commission granted intervention to DOD, in part, upon a finding that "[i]ssues relating to the reasonableness of the rates proposed to be charged by HECO appear to be crucial to the national defense interests represented by DOD.").

Whereas the DOD has demonstrated the divergent nature of its interest in terms of its role as one of HECO's largest customers, strategic role in national security, intervention in specific Commission dockets related to rates, and federal funding, the arguments set forth by the Commercial Group are largely conclusory. For example, with respect to "[t]he other means available whereby the applicant's interest may be protected" (see HAR § 6-61-55(b)(4)), the Commercial Group simply states that, "Absent each member intervening separately, the Commercial Group is not aware of any other means by which its interest may be represented and

protected other than its direct involvement in this proceeding.” Motion at 4-5. Such conclusory statements do not justify the Commercial Group’s intervention in this docket.

In addition, it is not enough for the Commercial Group to contend that the Consumer Advocate “may not necessarily be able to” represent its interests. See Motion at 5, para. 9. This contention does not meet the requirement set forth in HAR § 6-61-55(b)(5), which specifically requires a reference to “[t]he extent to which the applicant’s interest will not be represented by existing parties.” (Emphasis added.) Mere speculation about the Consumer Advocate’s representation of HECO’s commercial customers in rate proceedings does not fulfill the requirements for intervention under the Commission’s Rules of Practice and Procedure.

The Commercial Group relies on a Consumer Advocate memorandum supporting a DOD motion to intervene in support of its argument that the Consumer Advocate “may” not be able to represent its interests. Citing the Memorandum in Support of the DOD’s Motion to Intervene, filed by the Consumer Advocate on January 26, 2005 in HECO’s 2005 test year rate case, Docket No. 04-0113, the Commercial Group contends that the Consumer Advocate “may not necessarily be able to advance the interests of individual large customers, such as members of the Commercial Group.” This contention takes the Consumer Advocate’s statements out of context, as the Consumer Advocate’s support of the DOD’s intervention in that case was predicated in part upon an acknowledgement that “the DoD represents the separate interest of the Federal Government and taxpayers nationwide and may present special needs aside and apart from the general public due to their particular property and financial interests.” Id. at 3 (emphasis added).

The Commercial Group also concludes that its “interests will not be adequately represented by other participants in this docket” because allegedly, “HECO’s interests are in direct contrast to the Commercial Group’s” and “the Department of Defense . . . has distinctly

different interests from the Commercial Group.” See Motion at 5, para. 9. This conclusion is unsupported, as neither HECO’s nor the DOD’s interests in this docket – regardless of what those interests may be – should have any bearing on the Consumer Advocate’s ability to carry out its statutorily proscribed duties to all consumers in rate cases.

Moreover, the Motion provides no discussion of how the relief sought by HECO might affect an interest of the Commercial Group in a manner different than HECO’s commercial customers in general.

In fact, the Motion is inconsistent as to the types of HECO customers that constitute the Commercial Group. For example, the Commercial Group claims that “the group is comprised of multiple small [sic] medium and large sized commercial customers of HECO” and that such customers’ interests “will not be adequately represented by other parties to the proceeding.” Motion at 3-4 (emphasis added). At the same time, however, the Commercial Group contends that its “interests in this docket differs [sic] from that of the general public in that it is comprised of several large commercial customers” Motion at 7 (emphasis added).

With respect to the Commercial Group’s actual composition, the former statement appears more accurate than the latter. A review of various Commercial Group member websites reveals that the Commercial Group is composed of small, medium and large customers on various rate schedules including:

- Schedule G – General Service on Demand, which is for general power service application to small commercial customers with loads not exceeding 5,000 kWh per month or loads less than 25 kW;
- Schedule J – General Service Demand, which is for general power service applicable to commercial customers with loads greater than 5,000 kWh per month or at least 25 kW;
- Schedule PP – Large Power Primary Voltage Service, which is for general power service applicable to commercial or industrial customers with large power loads of at least 300 kW served at primary voltage; and

- Schedule PS – Large Power Secondary Voltage Service, which is for general power service applicable to commercial or industrial customers with large power loads of at least 300 kW that are served at the secondary voltage level.¹²

At any rate, the Commercial Group does not appear to represent a discrete group of commercial customers whose interests will not be represented by the Consumer Advocate. To the contrary, the diverse and diluted composition of the Commercial Group (which is apparently composed of small, medium and large; domestic and foreign; for-profit and nonprofit businesses, including “grocery stores, department stores, discount stores, specialty stores and wholesale clubs”¹³) generally represents a cross section of Hawaii’s commercial utility customers.

3. **The Commercial Group Has Not Demonstrated that Its Participation Would Assist in the Development of a Sound Record Regarding the Reasonableness of HECO’s Proposed Rate Increase.**

HAR § 6-61-55(b)(6) requires that motions to intervene make reference to “[t]he extent to which the applicant’s participation can assist in the development of a sound record[.]” With respect to this requirement, the Commercial Group claims to have members with “energy departments” and “regulatory teams” allegedly involved in “rate and policy proceedings” and “working groups.” See Motion at 6.

¹² See Testimony of Peter C. Young, filed July 3, 2008 as HECO T-22 in HECO’s 2009 test year rate case, Docket No. 2008-0083 at 26-32.

The Motion is also unclear as to who the Retail Merchants are. On one hand, the Motion implies that Retail Merchants is seeking intervention in its individual capacity as a HECO customer:

[T]he group is comprised of multiple small [sic] medium and large sized commercial customers of HECO.

* * *

. . . with collectively over 56 facilities in HECO’s service territory.

Motion at 3, para. 5; id. at 4, para. 6.

On the other hand, four of the Commercial Group’s six other members (i.e., Maui Divers, Safeway Inc., Step Three and Wal-Mart, Inc.) are also members of Retail Merchants, and although Macy’s, Inc. is not listed as a Retail Merchants member, Macy’s West is listed as a Retail Merchants member. This gives rise to the question of why the Commercial Group’s Motion to Intervene did not simply name Retail Merchants and Sam’s West, Inc. (i.e., the only member of the Commercial Group who is not also affiliated with Retail Merchants).

¹³ Motion at 4.

These general, unsupported allegations do not demonstrate that the Commercial Group could assist in the development of a sound record in this docket. First, as a preliminary matter, the Commercial Group has not provided the Commission with any support for its allegations above.

Second, in addition to being ambiguous as to exactly who are all of the "members" of the Commercial Group, the Motion does not specifically identify any of the Commercial Group's potential witnesses, or alleged experience with rate increase proceedings that might contribute to the development of a sound record regarding revenue requirements and other general rate case issues. For example, the Motion does not specify what "rate and policy proceedings" or "working groups" in which members of the Commercial Group were involved. In addition, the Motion does not state whether or to what extent the general rate case issues were addressed in these "rate and policy proceedings" or "working groups."

In contrast, when the Rocky Mountain Institute ("RMI"), applied for intervention in Hawaii Electric Light Company, Inc.'s ("HELCO") 2006 test year rate case, RMI provided specific examples of its experience, and the resources and expertise it could bring to that docket:

RMI has been on HELCO's advisory committee for three years, and extremely active in HELCO's Integrated Resource Planning process. RMI has taken the lead, on behalf of the HELCO Advisory Group members, in addressing all the substantive issues within the IRP process from demand, supply resources, fuel forecasts, and integration.

* * *

RMI is actively involved in the Act 95 Workshops and Docket No. 05-0069 (In the Matter of Hawaiian Electric Company, Inc. For Approval and/or Modification of Demand-Side and Load Management Programs and Recovery of Program Costs and DSM Utility Incentives). If RMI is granted party status, it plans to have several well-informed witnesses testify on pertinent issues. The list of witness includes, but would not be limited to, Kyle Datta, Carl Freedman, Joel Swisher, John Anderson, Jim Lazar and Natalie Mims.¹⁴

¹⁴ RMI's Motion to Intervene and Become a Party, filed in HELCO's 2006 test year rate case, Docket

RMI's motion to intervene identified the pertinent substantive issues addressed by specific advisory committees, advisory groups, and workshops in which it had participated, and the names of witnesses it intended to call in HELCO's 2006 rate case. In contrast, the Commercial Group's allegations regarding any expertise, knowledge or experience that it might bring to this docket with respect to rate increase subjects are vague, general, unsupported and unpersuasive.

Notably, notwithstanding RMI's relatively more specific representations as to the contributions it would make to the development of a sound record in HELCO's rate case, the Commission denied RMI's Motion to Intervene upon a finding that RMI's mission, stated expertise and appearances as a witness at public utility hearings were "not reasonably pertinent to HELCO's request for a general rate increase to justify full intervention in this proceeding." Order No. 22663, Docket No. 05-0315 (August 1, 2006) ("Order 22663") at 8 (emphasis added). As further discussed infra, the Commission ultimately granted RMI limited participation without intervention.

As noted above, intervenors in rate cases before the Commission generally are afforded full-party status with respect to all issues raised in the proceedings. However, there are a number of issues germane to rate cases (e.g., revenue requirements) for which the Commercial Group has provided no indication of having any expertise. Instead, the Commercial Group's interest in these proceedings appears to focus on cost of service and rate design.

As was the case for RMI in HELCO's 2006 test year rate case, the Commercial Group's alleged interest in cost of service and rate design cannot be characterized as an interest reasonably pertinent to HELCO's request for a general rate increase to justify full intervention in

No. 05-0315 at 5, 7.

this proceeding. As a result, allowing the Commercial Group to intervene as a full party in this docket would violate HAR § 6-61-55(d), which expressly provides that “[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.”

4. **A Movant Should Not Be Permitted to File Alternative Motions to Intervene in the Same Proceeding.**

The purpose of the Commission’s Rules of Practice and Procedure as stated in HAR § 6-61-1 is to “secure the just, speedy and inexpensive determination of every proceeding.”

Allowing a movant to file alternative motions to intervene (one in its own name and another where the movant is a member of an organized group) would not result in a just, speedy and inexpensive determination of proceedings before the Commission. In essence, Wal-Mart is getting a “second bite at the apple” for intervention through the Commercial Group’s Motion.

HECO’s Wal-Mart Memo demonstrated how the Wal-Mart Motion did not meet a movant’s burden to justify intervention as a party pursuant to HAR § 6-61-55. For example, the three-page (including the title page) Wal-Mart Motion made no reference to the required references set forth in HAR § 6-61-55(b)(7).¹⁵ In addition, the Wal-Mart Motion provided only conclusory statements with respect to the required references set forth in HAR §§ 6-61-55(b)(4) and (5),¹⁶ (6)¹⁷ and (8).¹⁸

It was only after HECO pointed out the deficiencies in the Wal-Mart Motion that the

¹⁵ I.e., “The extent to which applicant’s participation will broaden the issues or delay the proceeding.”

¹⁶ See Wal-Mart Motion at 2, para. 2 (“Wal-Mart is not aware of any other means available to it where it can effectively protect its interests.”).

¹⁷ See Wal-Mart Motion at 3, para. 4 (“Wal-Mart’s participation will contribute to the production of complete and accurate discovery and to the development of a sound record. Wal-Mart believes its participation will enable the Commission to view and consider more relevant and pertinent information than it would otherwise.”).

¹⁸ See Wal-Mart Motion at 3, para. 3 (“It is not unlikely that Wal-Mart’s position may be different from those advocated by HECO, the Consumer Advocate, or any other party to the instant proceeding.”).

Commercial Group sought intervention in this docket. (Wal-Mart subsequently notified the Commission on October 1, 2008 that it had substituted the Kobayashi law firm for the Bays Deaver law firm as its local counsel, and of its membership in the Commercial Group.)

Thus, Wal-Mart has involved itself in two, parallel motions to intervene (i.e., the Wal-Mart Motion and the Commercial Group Motion), being brought under two different theories (i.e., (1) that Wal-Mart should be allowed to intervene by virtue of being a “large retail customer,”¹⁹ and (2) that Wal-Mart should be allowed intervention by virtue of its membership in a group “comprised of small [sic] medium and large sized commercial customers of HECO.”²⁰), and in at least two different capacities (i.e., (1) as Wal-Mart, and (2) as a Commercial Group member).²¹

Such filing tactics could result in numerous motions to intervene by the same movant under different “organized groups or persons.” For example, given that a Motion to Intervene can be filed by any “organized group[] of persons, whether incorporated or not,”²² a party seeking intervention in a rate case could, using tactics similar to Wal-Mart’s, file numerous motions to intervene as members of different organized groups. This is undesirable for a number of reasons. First, the filing of multiple motions to intervene by the same movant would not result in a just, speedy and inexpensive determination of proceedings before the Commission. For instance, there could be multiple motions to intervene to be ruled upon by the Commission. In addition, the applicants would have to file multiple memoranda in opposition to the motions to intervene.

¹⁹ See Wal-Mart Motion at 2.

²⁰ Motion at 3.

²¹ Moreover, in effect, the Motion could be viewed as a reply to a memorandum in opposition that was submitted without first obtaining leave from the Commission to do so. HAR § 6-61-41 does not allow the filing of a reply memorandum in opposition.

²² HAR § 6-61-2.

This could lead to a “trial and error” approach to motions to intervene. This would put the utility in a situation where it must respond to motion after motion. Each response to a motion to intervene would provide a new road map for additional motions to be filed with and considered by the Commission. This is not an efficient use of the resources of the Commission or the applicants.

C. LIMITED PARTICIPATION WITHOUT INTERVENTION.

If the Commission finds that the Commercial Group should be allowed to participate, then it may be appropriate to allow the Commercial Group limited participation without intervention. The Commission in the past has denied intervenor status, but granted participation status pursuant to HAR § 6-61-56, and allowed the limited participation of persons seeking intervention on specific issues when such persons’ interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

HAR § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

For example, the Commission addressed participation without intervention in Re Hawaii Electric Light Co., Docket No. 05-0315, Order No. 22663 (August 1, 2006) (“Order No. 22663”). In that rate case, RMI filed a motion to intervene, which was denied because RMI’s stated experience and expertise were not reasonably pertinent to HELCO’s request for a general rate increase. The Commission nevertheless granted RMI “limited participant status, pursuant to H.A.R. § 6-61-56, restricted to the issues set forth in its Motion to Intervene, i.e., tiered rate pricing, time of use pricing, energy cost adjustment charge, net energy metering and the

renewable energy and energy efficiency program for affordable homes.” Order No. 22663 at 8 (emphasis added). In addition, the Commission stated that “unless the commission decides otherwise at a future date, RMI’s participation is limited to responding to any discovery requests, filing a statement of position, and responding to questions at any evidentiary hearing.” Id. at 8-9.

The Commission added:

RMI is cautioned that it must follow all applicable rules of the commission, and that the commission will reconsider RMI's participation in this docket if, at any time, the commission determines that it is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

Id. at 9.

In addition, in Re Hawaiian Electric Light Co., Docket No. 99-0207, Order No. 17532 (February 10, 2000) (“Order No. 17532”), the Commission denied the attempt of Citizen Utilities Company d/b/a The Gas Company (“TGC”) to intervene in Hawaii Electric Light Company’s (“HELCO”) rate case. However, the Commission granted TGC participant status, limited to HELCO’s proposed Standby Rider A.

The Commission stated:

the commission believes that TGC’s limited input as to the effects of Rider A on self-generators that use gas as a fuel source may prove useful. Therefore, consistent with HAR § 6-61-56(a), the commission will grant TGC participant status, limited to this narrow issue;²³ provided that TGC’s participation does not in any manner duplicate the efforts of the Consumer Advocate in this regard. If, at any time during the commission’s review, it is concluded that TGC’s efforts duplicate those of the Consumer Advocate’s, the commission will reconsider TGC’s further participation in this docket.

²³ In a footnote, the Commission added:

Unless ordered otherwise, TGC’s participation will extend no further. We also make clear that as part of its on-going review of HELCO’s request for a general rate increase, the commission, on its own motion or otherwise, may later decide to separate Rider A from this rate proceeding. If so, TGC’s participation in this rate proceeding will terminate. Finally, we note that in two dockets currently pending before the commission, Hawaiian Electric Company, Inc., seeks to implement a standby charge on an interim (Docket No. 99-0105) and permanent basis (Docket No. 96-0356).

Order No. 17532 at 5-6 (footnote 6 omitted). The Commission issued similar orders in Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989);²⁴ and Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992).²⁵

As discussed above, the Commercial Group's interest in these proceedings appears to focus on cost of service and rate design.

The Commercial Group has not requested participant status. If the Commercial Group is allowed to participate in this docket, however, then the Commercial Group should be designated a participant, and not an intervenor party, and its participation should be limited to cost of service and rate design issues. Moreover, the Commercial Group's participation should not be permitted in any settlement agreement between the parties²⁶ or to affect the schedule of proceedings or the

²⁴ In Order No. 10399, the Commission denied the amended application to intervene of Puna Community Council, Inc. ("PCC") in a HELCO rate case, but granted PCC participation status, subject to the conditions that (1) PCC's participant status would be "limited to the issue of the specific impact of HELCO's proposed rate structure on the ratepayers of the Puna district who are in the lower income brackets", and (2) "PCC shall participate in the proceedings and present relevant documents and materials and testimony of witnesses through the Consumer Advocate." Order No. 10399 at 5-6. PCC had sought to intervene on the basis that HELCO's proposal to increase its rates would seriously impact the ratepayers of the Puna district. PCC's only attempt to distinguish itself from the general public was the allegation that HELCO's proposed rate increase would seriously impact Puna ratepayers because most of them were in the lower income brackets and tend to use less power. PCC also argued that the Consumer Advocate would not adequately represent the interests of the Puna district ratepayers.

²⁵ In Decision and Order No. 11668, the Commission denied intervention, but allowed limited participation to seven low-income residents through its attorneys, the Legal Aid Society of Hawaii (collectively "Legal Aid"), in a Maui Electric Company, Limited ("MECO") rate case. The low-income residents, through Legal Aid, sought to intervene on the alleged basis that they would not be adequately represented by the Consumer Advocate. Decision and Order No. 11668 at 3. In addition, Legal Aid informed the Commission that it could further the development of the record as it had access to certain experts and resources not available to any other party. The Consumer Advocate supported Legal Aid's involvement in the proceeding. The Commission denied Legal Aid's Motion to Intervene, and found that the Consumer Advocate would protect Legal Aid's interest. However, the Commission was impressed by Legal Aid's statement of expertise, knowledge and experience, and thus granted Legal Aid participant status limited to the issue of the specific impact of MECO's proposed rate structure and rate design on ratepayers in the lower income brackets.

²⁶ See, e.g., the Stipulated Regulatory Schedule attached as Exhibit A to Order No. 22884, issued September 21, 2006 in Docket No. 2006-0084, page 2, wherein the Commission limited a participant's participation by the condition that the participant's assent to any settlement agreement between all or any of the parties was not required:

statement of the issues, and the Commercial Group should be required to comply with the Commission's Rules of Practice and Procedure.

In addition, the Commercial Group's participation should be limited to responding to any discovery requests, filing a statement of position, and responding to questions at an evidentiary hearing. This is similar to the participation granted to RMI in HELCO's 2006 test year rate case, wherein as discussed above, RMI made relatively more specific representations as to the contributions it would make to the development of a sound record than the Commercial Group has made in this docket. See Order 22663 at 9-10.

II. CONCLUSION

Based on the foregoing, HECO respectfully requests that the Commission deny the Commercial Group's Motion to Intervene. The Commercial Group has not requested participant status. If the Commercial Group is allowed to participate in this docket, however, then the Commercial Group should be designated a participant, and not an intervenor party, and its participation should be limited to cost of service and rate design issues. Moreover, the Commercial Group's participation should not be permitted in any settlement agreement between the parties or to affect the schedule of proceedings or the statement of the issues, and the Commercial Group should be required to comply with the Commission's Rules of Practice and Procedure.

To the extent settlement discussions occur collectively amongst the Parties, the Participant shall receive notice and have the opportunity to participate in such settlement discussions, provided that the assent of the Participant shall not be required to any settlement reached by all or any of the Parties.

DATED: Honolulu, Hawaii, October 7, 2008.



Kevin Katsura

Attorney for

HAWAIIAN ELECTRIC COMPANY, INC.

KOBAYASHI SUGITA & GODA

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September 29, 2008

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Goodsill Anderson Quinn & Stifel
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Re: In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC. For
Approval of Rate Increases and Revised Rate Schedules and Rules; Docket No. 2008-
0083

☒ Mail

☐ Hand Delivery

☐ Pick-up

Transmitted:

☒

For your information and files

☐

For review and comment

☐

For signature / return

☐

For necessary action

☐

For approval

☐

As requested

Copies

Description

1

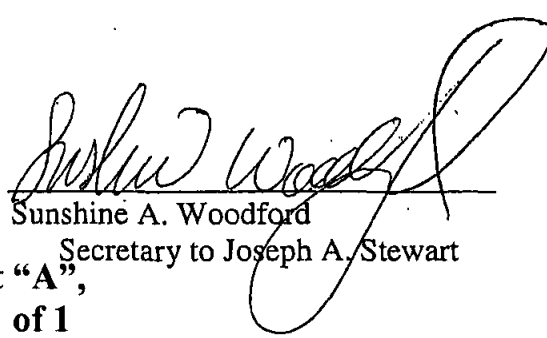
Motion to Intervene and Become a Party; Certificate of Service

1

Motion to Appear on Behalf of Hawaii Commercial Energy Consumer Group;
Affidavit and Certificate of Service

Remarks:

By


Sunshine A. Woodford

Secretary to Joseph A. Stewart

Exhibit "A",
Page 1 of 1

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII**

**In The Matter Of the Application Of
HAWAIIAN ELECTRIC COMPANY, INC.
For Approval of Rate Increases and Revised
Rate Schedules and Rules**

DOCKET NO. 2008-0083

DECLARATION OF COUNSEL


1. I, Damon L. Schmidt, am counsel of record herein for Hawaiian Electric Company, Inc. I make this declaration based upon my own personal knowledge and upon information and belief gained in that capacity.

2. I am an attorney with the law firm of Goodsill Anderson Quinn & Stifel, a Limited Liability Law Partnership LLP ("Goodsill"), whose offices are located at Ali'i Place, Suite 1800, 1099 Alakea Street, Honolulu, Hawaii, 96813.

3. The time stamp placed upon the envelope containing (1) the Motion to Intervene and Become a Party, and (2) the Motion to Appear on Behalf of the Hawaii Commercial Energy Customer Group ("Commercial Group"), which Motions were filed by the Commercial Group on September 29, 2008 in this docket, indicates that it was received via hand delivery at Goodsill's offices at 11:21 am on September 30, 2008.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, October 7, 2008.



DAMON L. SCHMIDT

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII**

**In The Matter Of the Application Of
HAWAIIAN ELECTRIC COMPANY, INC.
For Approval of Rate Increases and Revised
Rate Schedules and Rules**

DOCKET NO. 2008-0083

DECLARATION OF DEAN K. MATSUURA

1. I, Dean K. Matsuura, am Manager, Regulatory Affairs for Hawaiian Electric Company, Inc. I make this declaration based upon my own personal knowledge and upon information and belief gained in that capacity.

2. My business address is P.O. Box 2750, Honolulu, Hawaii, 96840-0001.

3. The Motion to Intervene and Become a Party, and Motion to Appear on Behalf of the Hawaii Commercial Energy Customer Group ("Commercial Group"), which Motions were filed by the Commercial Group on September 29, 2008 in this docket, were mailed to HECO with a September 29, 2008 postmark.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, October 7, 2008.


DEAN K. MATSUURA

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing MEMORANDUM IN OPPOSITION TO THE MOTION TO INTERVENE AND BECOME A PARTY OF HAWAII COMMERCIAL ENERGY CUSTOMER GROUP, EXHIBIT "A" DECLARATION OF DEAN K. MATSUURA AND DECLARATION OF COUNSEL, together with this Certificate of Service, by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

Catherine Awakuni, Executive Director
Department of Commerce and Consumer Affairs
Division of Consumer Advocacy
335 Merchant Street, Room 326
Honolulu, Hawaii 96813

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Gayle B. Chestnut
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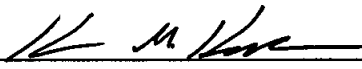
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DATED: Honolulu, Hawaii, October 7, 2008.



Kevin Katsura

Attorney for:

HAWAIIAN ELECTRIC COMPANY, INC.

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